IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1599 OF 2006

Shri Shabbir Badashah Tamboli .... Petitioner
Vs.
Smt. Narmadabai J. Pardeshi
(Teli) & Ors. .... Respondents

Shri S.S. Shah for the Petitioner.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

ORAL ORDER:

1. Heard. The petitioner challenges the order dated 23-12-2005 passed by the trial Court allowing the application for amendment to the plaint in the eviction suit.

2. The first ground of challenge is that the trial Court has totally ignored the provisions of Order VI, Rule 17 of the C.P.C. whereby no application for amendment can be entertained after the commencement of the trial unless the applicant establishes that inspite of due diligence, he could not raise the point, sought to be raised by way of amendment prior to the date of filing of the application for amendment. In that regard, attention is drawn to the copy of the reply filed by the petitioner before the trial Court with

reference to the application for amendment. In his said reply, the petitioner while objecting to the application for amendment had stated that the application had been filed about two years after the commencement of the case and while the proceedings were ripe for recording of evidence.

3. The law on the point of right of the parties to the proceedings to amend their pleadings has undergone drastic change since 2002 consequent to amendment to Rule 17 of Order 6 of the C.P.C. by the Code of Civil Procedure (Amendment) Act, 2002. A proviso has been added to the existing Rule and it reads thus:

> "Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

4. Plain reading of the proviso would disclose that it comes into operation only on commencement of trial and not before it. The term ‘trial’ has not been defined under the C.P.C.. However, it is well-settled that the said expression relates to the stage of recording of the

evidence. In other words, once the recording of evidence commences, the parties cannot be allowed to amend their pleadings, unless they satisfy the Court that they could not, in spite of their due diligence, raise the matter before the date of filing of the application and before the commencement of trial.

5. In the case in hand, apart from the contention that the application was filed while the suit was ripe for recording evidence, nothing has been brought to my notice by which it can be said that the application for amendment was filed after the commencement of the trial. The suit being ripe for recording of evidence is different from the commencement of recording of evidence. The bar prescribed under Rule 17 of Order VI of the C.P.C. applies to the stage after the commencement of the trial and not at the stage of the matter being ripe for trial. In the absence of nothing on record to disclose that the trial had already commenced and the application was filed after such commencement of the trial, no interference is called for in the impugned order on the alleged ground.

6. It is then sought to be contended that there was no application for delay in filing the application for amendment. Referring to the application for amendment in the trial Court, it was sought to be contended on

behalf of the petitioner that the averment in the application clearly disclosed that news regarding the raid on the suit premises and recovery of foreign liquor therefrom was published in the daily Lokmat on 8-9-2002. Being so, there was sufficient opportunity for the respondent to know about the said fact even prior to the filing of the proceedings as they were filed in July, 2003. While canvassing this argument, the petitioner conveniently forgets the specific averment by the respondent in his application that though there was a raid in September, 2002 and the news item in that regard had appeared in the Lokmat on 8-9-2002, the respondent came to know about the same few days prior to the filing of the application. Being so, it cannot be said that there was delay in filing the application. In any case, mere delay by itself cannot be a ground for rejection of the application unless the delay is of such a nature which can be called as fatal in terms of the provisions comprised under Order VI, Rule 17 of the C.P.C..

7. It is then sought to be contended that in terms of Section 16(1)(c) of the Maharashtra Rent Control Act, 1999, based on which the proposed ground for eviction is sought to be incorporated by way of amendment, the eviction can be sought on the ground of conviction of the tenant for using the premises or allowing the premises to be used for immoral or illegal purposes. In

the case in hand, the proposed amendment nowhere discloses the conviction of the petitioner on account of the alleged use of the suit premises for illegal purposes. Whether ultimately the respondent will succeed in proving the ground sought to be incorporated is a totally different issue and cannot be dealt with while considering the application for amendment. That would be an issue to be dealt with while considering the matter on merits consequent to the amendment being allowed. It is too premature to decide the said point at this stage.

8. Being so, there is absolutely no case made out for interference in the impugned order in writ jurisdiction. The impugned order does not disclose any jurisdictional error and, therefore, the petition fails and is hereby dismissed.

(R.M.S. Khandeparkar, J.)

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